

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD CRAYTON,

Defendant.

ORDER

10-cr-12-bbc

13-cv-552-bbc

Defendant Richard Crayton has filed a notice of appeal from the September 23, 2013 order denying his post conviction motion under 28 U.S.C. § 2255. Although it appears that the appeal is untimely, it is not within this court's authority to determine the timeliness of an appeal; that decision is for the court of appeals to make.

Defendant's notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not

taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Defendant’s challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

Defendant Richard Crayton’s motion to proceed in forma pauperis on appeal is GRANTED.

Entered this 13th day of November, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge